

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR07-1344

CLIFFORD JOE PULLAN,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE**Opinion Delivered** 8 OCTOBER 2008APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT,
[NO. CR-2005-623 (II)]HONORABLE MICHAEL MEDLOCK,
JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

Unbeknownst to Clifford Joe Pullan, his ex-wife's niece told law enforcement officers that he was selling marijuana and offered to set him up. The officers videotaped the seventy-six-year-old man selling marijuana to her three times. The jury convicted him. The circuit court imposed the three ten-year sentences fixed by the jury and followed the jury's recommendation for consecutive service of those sentences. Pullan appeals. He argues that the trial court abused its discretion by denying his motion in limine to exclude his 1995 conviction for violation of a minor. The court refused to admit the conviction in the State's case in chief, but admitted it during the sentencing phase.

Pullan's main point is that the circuit court failed to evaluate properly whether his prior conviction should have been excluded. The Code made proof of Pullan's

prior conviction relevant evidence during the sentencing phase of his trial. Ark. Code Ann. § 16-97-103(2) (Repl. 2006). At least some of the Rules of Evidence nonetheless apply to further questions, *Buckley v. State*, 341 Ark. 864, 874–75, 20 S.W.3d 331, 338 (2000), such as whether the evidence was unduly prejudicial. This is a murky legal area, but what is clear is that the circuit court has wide discretion in answering these evidentiary questions. *Jiles v. State*, 78 Ark. App. 43, 46, 82 S.W.3d 173, 174 (2002).

Here, the issues raised by Pullan’s motion in limine were fully argued before the circuit court several times before and during the trial. The court differentiated between Pullan’s 1995 conviction for violating a minor and his more recent felony arrest and misdemeanor conviction for other drug-related crimes. The former, the court decided, would be admissible only during sentencing if the jury convicted, while the latter would be admissible for impeachment if Pullan offered planned evidence of his good character, such as his service in Vietnam. Pullan’s counsel acknowledged that current law supported the 1995 conviction’s admission during the sentencing phase. He asked the court to exclude it, however, because of its prejudicial effect.

The record demonstrates the court’s careful consideration of all the arguments made by defense counsel. The circuit court admitted the 1995 judgment of conviction into evidence. But there was no testimony about the details of Pullan’s sex crime. There is no indication that the circuit court acted “improvidently, thoughtlessly, or

without due consideration” in making this judgment call. *Butler v. State*, 367 Ark. 318, 321, 239 S.W.3d 514, 517 (2006). We therefore hold that the circuit court acted within its evidentiary discretion during sentencing by rejecting Pullan’s undue-prejudice argument.

Affirmed.

PITTMAN, C.J., and HEFFLEY, J., agree.